

REMARKS

The Office Action dated May 20, 2004 has been studied in detail along with the references cited by the Examiner. In response, new claims 119-123 are presented for consideration. The pending claims (96-113, 119-123) should be read in conjunction with the accompanying arguments in support of patentability. Further examination and reconsideration of the application as amended are respectfully requested.

THE OFFICE ACTION

Claims 96-106, 108, and 110-113 stand rejected under 35 U.S.C. §102(b) as being anticipated by Asenbauer and under 35 U.S.C. §102(a) as being anticipated by Tucker, et al.

Claims 107 and 109 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Tucker, et al. or Asenbauer in view of Weckman.

REJECTIONS UNDER 35 U.S.C. §102(b) AND SECTION 102(a)

The Examiner rejected claim 96-106, 108, and 110-113 under 35 U.S.C. §102(b) as being anticipated by Asenbauer and under Section 102(a) as being anticipated by Tucker, et al. Both of the references disclose containers having side walls that taper outward from a bottom wall. The tapered side walls are adapted to allow the open containers to be nested with one another. Additionally, both of the references include a lid with an engaging flange whereby an outer surface of the lid is canted to and non-coplanar with the side walls of the container.

In contrast, independent claim 96 recites a container having a foot side wall 120 including a lid accommodating portion having an outer surface displaced from the foot outer surface 134. A lid 102 is adapted to engage the tray 100 and close the tray open top. The lid 102 has a generally planar top 140 and a side flange 142 generally perpendicular to the top 140. The side flange 142 has a foot portion having a generally planar outer surface 154. The flange foot portion outer surface 154

and the tray foot portion outer surface 134 are generally coplanar when the lid 102 is engaged to the tray 100.

New independent claim 119 recites a tray having a generally flat bottom and four side walls. The side walls generally are perpendicular to the flat bottom. New claim 119 further recites a lid having a side flange with a foot portion including a generally planar outer surface. The outer surface of the side flange is generally coplanar with the outer surface of a foot side wall when the lid is engaged to the tray.

The aforementioned structures, recited in independent claims 96 and 119, are not shown in Asenbauer or Tucker, et al. Among other things, the claimed structure results in a coplanar arrangement between the outer surface of the side flange and the outer surface of the foot side wall. Applicants submit that pending independent claims 96 and 119, and all claims dependent therefrom, are not anticipated by Asenbauer nor Tucker for at least the reasons set forth above, and are allowable over this record art. Applicants accordingly request reconsideration and allowance thereof.

REJECTIONS UNDER 35 U.S.C. §SECTION 103(a)

The Examiner next rejected claims 107 and 109 under 35 U.S.C. §103(a) as being unpatentable over Tucker, et al. or Asenbauer in view of Weckman. The references contain no motivation or suggestion to combine the references. Furthermore, Tucker, et al. teaches away from Weckman. In particular, Tucker, et al. teaches a stackable container suitable for microwave cooking. The Weckman reference teaches a freestanding unitary container for containing volatile fluids, such as charcoal lighter fluid, automotive engine treatment, etc. These volatile fluids must be kept from intensive heat and would not be compatible with containers for heating. Tucker describes a nestable, open-topped container. Weckman describes a bottle. The two container types are fundamentally

different. Thus, there is no motivation to combine the references.

Asenbauer discloses a container lid with encapsulated reinforcing members. The reinforced lid provides a support mechanism for stacking containers one upon the other. The Weckman reference recites a collapse-resistant container for containing volatile fluids. The container does not allow stacking one upon the other, nor does the cap (lid) provide any support mechanism for another container. Thus, there is no suggestion nor motivation to combine these two references.

The lack of motivation to combine Weckman with either of the other two cited references, along with the claim distinctions referenced above, define over any fair teachings attributable to the references, either taken singularly or in combination. The arguments raised with respect to the above-identified claims with respect to Section 102 are equally appropriate here and will not be repeated. Claims 107 and 109 are not made obvious for at least the reasons stated above.

In addition, neither Tucker, et al., Asenbauer, nor Weckman recognize the problems addressed by Applicants. One skilled in the art, having the cited references before him, would not be informed that the problems solved by Applicants ever existed. Among other things, providing a container to solve the problems associated with filling and hardening of ice cream, multiple display orientations, stacking, labeling, et al. Applicants request reconsideration and withdrawal of the Section 103 rejection of claims 107 and 109 and allowance thereof.

All formal and informal matters having been addressed, this application is in condition for allowance. Early notice to that effect is solicited.

Respectfully submitted,
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